

# Rose, Chinitz & Rose

C O U N S E L L O R S   A T   L A W

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March 14, 2014

**By ECF**

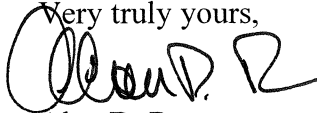
Hon. Robert B. Collings  
United States Magistrate Judge  
John Joseph Moakley United States Courthouse  
1 Courthouse Way  
Boston, MA 02210

Re: JMA, Inc., St. Jude's Medical S. C. Inc., et al. v. Biotronik, Inc.  
USDC Florida, Miami Division, C.A. No. 1:12-cv-23466-PAS

Your Honor:

In accordance with docket entry 36, enclosed please find correspondence between Biotronik SE & Co. KG, and Biotronik GmbH & Co. KG ("Biotronik Germany"). Leave to file this correspondence was granted today, March 14, 2014.

Thank you for your cooperation.

Very truly yours,  
  
Alan D. Rose

ADR/mct  
Enclosure

Cc: All Counsel of Record

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March 7, 2014

**Via Overnight Mail**

Gregg H. Metzger  
Christina DeAngelis  
FELDMAN GALE, P.A.  
One Biscayne Tower, 30th Floor  
2 South Biscayne Blvd  
Miami, FL 33131

**Re: JMA, Inc. et al. v. Biotronik, Inc.**  
**(Case No. 1:12-cv-23466)**

Dear Gregg and Christina:

Enclosed are copies of Sean Donahue's February 11 request to Biotronik SE & Co. KG and Biotronik GmbH & Co. KG (collectively, "Biotronik Germany"), pursuant to the Court's Order Following Discovery Conference [DE 91], and Biotronik Germany's responses thereto, dated February 20 and March 4.

Please let me know if you have any questions.

Sincerely,

  
Sean R. Santini

cc: Sean Donahue (w/encls.)

Enclosures

DONAHUE & ASSOCIATES

Attorneys at Law

1625 Umpqua Bank • One SW Columbia Street

Portland, Oregon 97258-2021

Phone: 503-226-1084 • Fax: 503-227-6366 • E-mail: sean.donahue@biotronik.com

SEAN DONAHUE

February 11, 2013

By E-mail

Ms. Katy Herbst

Legal Counsel

BIOTRONIK SE & Co. KG

BIOTRONIK GmbH & Co. KG

Voermannkehre 1

12359 Berlin, Germany

Re: *JMA, Inc., et al. v. Biotronik, Inc.*

USDC, Southern District of Florida Case No. 1:12-cv-23466-PAS

Dear Katy:

Last week, during a discovery hearing before the Magistrate Judge, I was directed to request that Biotronik GmbH & Co. KG and Biotronik SE & Co. KG (collectively, "Biotronik Germany") conduct computer searches using the following ESI search terms and to produce all responsive documents from January 1, 2006 to the present:

"supply agreement";

"supply contract";

"re-label";

"relabel";

"re-brand";

"rebrand"

and any variations of these last four search terms using "ing" and "-ed" suffixes. These search terms must be limited by the following qualifiers:

"Boston Scientific";

"Guidant";

"CPI";

"Cardiac Pacemakers, Inc.";

"Sorin" and/or "ELA";

The Court advised that documents having nothing to do with the State of Florida (by way of example, documents relating to sales in China) or pre-dating January 1, 2006 need not be produced.

Ms. Katy Herbst  
February 11, 2014  
Page 2

The Magistrate Judge also directed me to request from Biotronik Germany all documents that are responsive to the following discovery requests (again, documents having nothing to do with the State of Florida or pre-dating January 1, 2006 need not be produced):

17. All agreements relating to "OEM" sales of Biotronik-manufactured CRM medical devices to CRM companies other than Biotronik, such as, but not limited to, the OEM sales contemplated by the May 18, 2011 Memorandum from Marlou Janssen to "Biotronik Sales Force and Employees", a copy of which is attached hereto as Exhibit "1".

18. All correspondence between Biotronik, Inc. and Biotronik SE & Co. KG relating to "OEM" sales of Biotronik-manufactured CRM medical devices to CRM companies other than Biotronik, such as, but not limited to, the OEM sales contemplated by the May 18, 2011 Memorandum from Marlou Janssen to "Biotronik Sales Force and Employees", a copy of which is attached hereto as Exhibit "1".

20. All correspondence between Biotronik SE & Co. KG and CRM companies other than Biotronik relating to "OEM" sales of Biotronik-manufactured CRM medical devices to CRM companies other than Biotronik, such as, but not limited to, the OEM sales contemplated by the May 18, 2011 Memorandum from Marlou Janssen to "Biotronik Sales Force and Employees", a copy of which is attached hereto as Exhibit "1".

22. All correspondence between Biotronik SE & Co. KG and hospitals, physicians or any other hospital accounts relating to "OEM" sales of Biotronik-manufactured CRM medical devices to CRM companies other than Biotronik, such as, but not limited to, the OEM sales contemplated by the May 18, 2011 Memorandum from Marlou Janssen to "Biotronik Sales Force and Employees", a copy of which is attached hereto as Exhibit "1".

24. All correspondence between Biotronik SE & Co. KG and any member of the Biotronik sales force or any such member's counsel relating to "OEM" sales of Biotronik-manufactured CRM medical devices to CRM companies other than Biotronik, such as, but not limited to, the OEM sales contemplated by the May 18, 2011 Memorandum from Marlou Janssen to "Biotronik Sales Force and Employees", a copy of which is attached hereto as Exhibit "1," including, but not limited to, demand letters or other legal correspondence.

26. All correspondence between Biotronik SE & Co. KG and any Biotronik sales manager or any such manager's counsel relating to "OEM" sales of Biotronik-manufactured CRM medical devices to CRM companies other than Biotronik, such as, but not limited to, the OEM sales contemplated by the May 18, 2011 Memorandum from Marlou Janssen to "Biotronik Sales Force and Employees", a copy of which is attached hereto as Exhibit "1," including, but not limited to, demand letters or other legal correspondence.

Ms. Katy Herbst  
February 11, 2014  
Page 3

29. All internal correspondence of Biotronik SE & Co. KG relating to "OEM" sales of Biotronik manufactured CRM medical devices to CRM companies other than Biotronik, such as, but not limited to, the OEM sales contemplated by the May 18, 2011 Memorandum from Marlou Janssen to "Biotronik Sales Force and Employees", a copy of which is attached hereto as Exhibit "1".

30. All correspondence between Biotronik SE & Co. KG and Kenyon Wells relating to "OEM" sales of Biotronik-manufactured CRM medical devices to CRM companies other than Biotronik, such as, but not limited to, the OEM sales contemplated by the May 18, 2011 Memorandum from Marlou Janssen to "Biotronik Sales Force and Employees", a copy of which is attached hereto as Exhibit "1," including, but not limited to, demand letters or other legal correspondence.

32. All correspondence between Biotronik SE & Co. KG and Michael Carey relating to "OEM" sales of Biotronik-manufactured CRM medical devices to CRM companies other than Biotronik, such as, but not limited to, the OEM sales contemplated by the May 18, 2011 Memorandum from Marlou Janssen to "Biotronik Sales Force and Employees", a copy of which is attached hereto as Exhibit "1," including, but not limited to, demand letters or other legal correspondence.

Finally, I have also been directed to request all documents in Biotronik Germany's possession that are responsive to Requests for Production Nos. 1 - 22 in St. Jude's Second Request for Production of Documents. A copy of these requests is attached. As with the searches described above, Biotronik Germany need not produce documents having nothing to do with the State of Florida or pre-dating January 1, 2006.

The Court has ordered me to produce all documents that may be responsive to these requests by March 7, 2014. In the event you have questions concerning the Magistrate Judge's ruling, please call me.

Very truly yours,

DONAHUE & ASSOCIATES



Sean Donahue

SD:bjf

cc: Sean Santini (by e-mail)

biotronik\lapadula\usdc\litigation\herbstletter2-11-14.doc

Antwort: Fw: JMA, Inc. et al. v. Biotronik, Inc. )

cc: Sean Donahue

03/04/2014 02:03 AM

ssantini

Sean,

As requested by the court we did an extensive search of documents with the limitation to Florida and limited in time from 2006 until today. I would like to inform you that we did not get any results.

Regards,  
Katy

I. V. / p.p. Katy Herbst  
Justiziarin / Senior Legal Counsel

BIOTRONIK SE & Co. KG  
Woermannkehre 1  
12359 Berlin, Germany  
Phone: +49 (0) 30 68905-2310  
Fax: +49 (0) 30 68905-96-2300  
Mail: katy.herbst@biotronik.com

Katy Herbst

Sean, please excuse my late answer but I was not in...

20.02.2014 11:38:31

Von: Katy Herbst/BIO-DE/MDB/MSK  
An: Sean Donahue/BIOS-US/MDB/MSK@BIOTRONIK  
Kopie: ssantini@santini-lawfirm.com  
Datum: 20.02.2014 11:38  
Betreff: Antwort: Fw: JMA, Inc. et al. v. Biotronik, Inc.

Sean, please excuse my late answer but I was not in the office for several days.

Although neither German company is a party to this case as BIOTRONIK SE & Co. KG has been dismissed, I understand the request of the court. Out of a spirit of cooperation, we will run the searches as directed by the magistrate judge (limited to the State of Florida and dated from January 1, 2006 to the present).

But please be aware that BIOTRONIK Germany is not prepared to release and disclose any confidential or proprietary information to SJM or to its counsel.

Kind regards,  
Katy

I. V. / p.p. Katy Herbst  
Justiziarin / Senior Legal Counsel

BIOTRONIK SE & Co. KG  
Woermannkehre 1  
12359 Berlin, Germany  
Phone: +49 (0) 30 68905-2310  
Fax: +49 (0) 30 68905-96-2300  
Mail: katy.herbst@biotronik.com

Sean Donahue

Katy, please see the attached correspondence. Sea...

11.02.2014 20:44:26

Von: Sean Donahue/BIOS-US/MDB/MSK  
An: Katy Herbst/BIO-DE/MDB/MSK@BIOTRONIK

Kopie: ssantini@santiniawfirm.com  
Datum: 11.02.2014 20:44  
Betreff: Fw: JMA, Inc. et al. v. Biotronik, Inc.

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Katy, please see the attached correspondence.

Sean Donahue

----- Forwarded by Sean Donahue/BIOS-US/MDB/MSK on 02/11/2014 11:35 AM -----

From: Sean Donahue/BIOS-US/MDB/MSK  
To: Katy Herbst/BIO-DE/MDB/MSK@BIOTRONIK,  
Cc: ssantini@santiniawfirm.com  
Date: 02/11/2014 11:17 AM  
Subject: JMA, Inc. et al. v. Biotronik, Inc.

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Katy, please see the attached correspondence.

Sean Donahue[Anhang "HerbstLtr2-11-14.pdf" gelöscht von Katy Herbst/BIO-DE/MDB/MSK]